

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1999-013358

05/09/2003

HONORABLE MAURICE PORTLEY

CLERK OF THE COURT
N. Northrop
Deputy

FILED: 05/13/2003

IN RE THE MATTER OF
KAZIMIERZ KOSINSKI

KAREN A SCHOENAU

AND

MATYLD A KOSINSKI

THOMAS N O'LEARY

MINUTE ENTRY

The Court took the matter under advisement after the evidentiary hearing on whether Petitioner/Husband is in contempt and what sanction, if any, is appropriate, as well as Respondent/Wife's quiet title action.

I

The contempt matter is straightforward. Husband was ordered to pay Wife spousal maintenance. He has not paid spousal maintenance. He did, however, send her \$100.00 in a Christmas card.

Husband defends his failure to make payment on the basis that he only receives Social Security and a small monthly pension. Moreover, he testified that his monthly expenses exceed his income and his son, Casimir Kosinski, has to help him make ends meet.

Wife counters Husband's claim by noting that he received money from the sale of certain Chicago real estate; a *res judicata* finding from the trial. Although Husband disputes that finding in the Decree, and has appealed, the Court is bound by its earlier finding that Husband received funds from the sale of certain property in Chicago. As a result, although Husband's monthly income may not be sufficient to meet his monthly expenses, he has additional money, or access to money, from which to make the monthly spousal maintenance payments of \$400.00.

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Accordingly, Husband is in contempt for failing to pay the monthly spousal maintenance.

The Court has previously found Husband in contempt for failing to pay spousal maintenance. Based on Husband's continuing actions, the Court believes that Husband does not intend to pay Wife spousal maintenance or any other payment.

Husband needs to be sanctioned. The Court has previously tried to merely enter judgment, with attorney's fees as an appropriate sanction. The prior sanctions have not spurred Husband to act.

Since the contempt has continued, sanctions are appropriate. They will include 10% interest on each payment not made timely, retroactive to the time of the decree, attorney's fees for bringing the current contempt, and issuing a civil arrest warrant taking Husband into custody and placing him in jail, with a purge amount to remedy the contempt.

II

Husband signed a promissory note in favor of Mr. and Mrs. Casimir Kosinski for sums they loaned to Husband. Husband then urged his son to place a lien against the Sun City property, and that was accomplished. The lien sits as a first lien since the property was purchased at the time the parties moved to Sun City

Wife wants the lien removed. She wants Husband to quit claim the property to her. She also wants punitive damages for the fraudulent transfer.

Based on all the testimony the Court received at the evidentiary hearing, as well as the trial, it is clear that Husband appreciated the impact of signing the promissory note and having the lien recorded. He knew that it would impact the Decree, as well as diminishing Wife's interest in the proceeds from the house.

Wife, however, does not have clean hands in this matter. She was not living in the Sun City property. She moved in during August/September 2002, and has remained on the property. She paid the Sun City Association fees. She has made no other financial contribution towards maintenance of the property; whether paying the taxes or contributing to the costs of replacing the water heater. Husband, however, did not ask her for any financial contribution.

The Decree ordered that the Sun City property be sold and the proceeds divided. She has not cooperated in the sale of the property. She does not intend to cooperate in the sale of the property. She wants the house.

The Court will have to fashion an equitable remedy, based on the conduct of the parties.

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The house will still be sold. The recorded lien shall be subordinate to Wife's interests in the Sun City property. If the house is sold before Husband has paid all the sums due and owing as a result of this order or prior orders, Wife shall recover her one-half interest in the property, as stated in the Decree, plus all sums then due and owing. Husband shall have the remaining interest and Mr. and Mrs. Casimir Kosinski shall recover their interest from only Husband's interest.

Therefore,

IT IS ORDERED as follows:

1. Husband is in contempt for failing to make spousal maintenance payments as ordered.
2. Husband shall be responsible for making each payment, plus interest at the rate of 10% per annum on each payment, plus attorney's fees to be awarded.
3. Wife's counsel shall submit a form of judgment, with a China Doll affidavit.
4. Husband shall have 20 days from the time the judgment is entered to pay the unpaid sums, or the Court will issue a civil arrest warrant to jail him until he pays the purge amount which shall be no less than the full amount of all spousal maintenance payments.
5. The lien Husband had recorded against the Sun City property shall be subordinate to Wife's interests in the property. Upon the sale of the property, Wife shall recover her one-half interest, plus all other sums due and owing before Mr. and Mrs. Casimir Kosinski recover any funds from Husband's remaining interests.
6. Wife is entitled to her attorney's fees in this matter.

This Court is signing this minute entry as a formal written Order of the Court, pursuant to Rule 58 (A) and waiving the requirements of Rule 58(D).

/S/ HONORABLE MAURICE PORTLEY

JUDICIAL OFFICER OF THE SUPERIOR COURT